

Internal Revenue Service, Treasury

§ 1.1445-6

(f) *Taxable distributions by domestic or foreign partnerships, trusts, or estates.* [Reserved]

(g) *Dispositions of interests in partnerships, trusts, and estates.* [Reserved]

[T.D. 8113, 51 FR 46642, Dec. 24, 1986; 52 FR 3796, 3917, Feb. 6, 1987, as amended at T.D. 8198, 53 FR 16230, May 5, 1988; T.D. 8321, 55 FR 50553, Dec. 7, 1990; T.D. 8647, 60 FR 66076, Dec. 21, 1995; 61 FR 7157, Feb. 26, 1996; T.D. 8734, 62 FR 53467, Oct. 14, 1997]

§ 1.1445-6 Adjustments pursuant to withhold certificate of amount required to be withheld under section 1445(e).

(a) *Withholding certificate for purposes of section 1445(e)*—(1) *In general.* Pursuant to the provisions of § 1.1445-5 (c)(2)(iv), (d)(2)(ii), and (e)(2)(iv), withholding under section 1445(e) may be reduced or eliminated pursuant to a withholding certificate issued by the Internal Revenue Service in accordance with the rules of this § 1.1445-6. A withholding certificate may be issued in cases where adjusted withholding is appropriate (e.g., because of the applicability of a nonrecognition provision—see paragraph (c) of this section), where the relevant taxpayers are exempt from U.S. tax (see paragraph (d) of this section), or where an agreement for the payment of tax is entered into with the Service (see paragraph (e) of this section). A withholding certificate that is obtained prior to a transfer allows the entity or fiduciary to withhold a reduced amount or excuses withholding entirely. A withholding certificate that is obtained after a transfer has been made may authorize a normal refund or an early refund pursuant to paragraph (g) of this section. The Internal Revenue Service will act upon an application for a withholding certificate not later than the 90th day after it is received. (The Service may deny a request for a withholding certificate where, after due notice, an applicant fails to provide the information necessary to make a determination.) Solely for this purpose (i.e., determining the day upon which the 90 day period commences), an application is received by the Service on the date when all information necessary for the Service to make a determination is provided by the applicant. (For rules regarding whether an application has

been timely submitted, see § 1.1445-5(b)(5)). The Internal Revenue Service will act upon an application for an early refund not later than the 90th day after it is received. An application for an early refund must either (i) include a copy of a withholding certificate issued by the Service with respect to the transaction, or (ii) be combined with an application for a withholding certificate. Where an application for an early refund is combined with an application for a withholding certificate, the Service will act upon both applications not later than the 90th day after receipt. Either an entity, a fiduciary, or a relevant taxpayer (as defined in paragraph (a)(2) of this section) may apply for a withholding certificate. An entity or fiduciary may apply for a withholding certificate with respect to all or less than all relevant taxpayers. For special rules concerning the issuance of a withholding certificate to a foreign corporation that has made an election under section 897(i), see § 1.1445-7(d).

(2) *Relevant taxpayer.* For purposes of this section, the term “relevant taxpayer” means any foreign person that will bear substantive income tax liability by reason of the operation of section 897 with respect to a transaction upon which withholding is required under section 1445(e).

(b) *Applications for withholding certificates*—(1) *In general.* An application for a withholding certificate pursuant to this § 1.1445-6 must be submitted in the manner provided in § 1.1445-3 (b). However, in lieu of the information required to be submitted pursuant to § 1.1445-3(b)(4), the applicant must provide the information required by paragraph (b)(2) of this section. In addition, the information required by paragraph (b)(3) of this section must be submitted with the application.

(2) *Basis for certificate*—(i) *Adjusted withholding.* If a withholding certificate is sought on the basis of a claim that adjusted withholding is appropriate, the application must include a calculation, in accordance with paragraph (c) of this section, of the maximum tax that may be imposed on each relevant

taxpayer with respect to which adjusted withholding is sought. The application must also include all evidence necessary to substantiate the claimed calculation, such as records of adjustments to basis or appraisals of fair market value.

(ii) *Exemption.* If a withholding certificate is sought on the basis of a relevant taxpayer's exemption from U.S. tax, the application must set forth a brief statement of the law and facts that support the claimed exemption. See paragraph (d) of this section.

(iii) *Agreement.* If a withholding certificate is sought on the basis of an agreement for the payment of tax, the application must include a copy of the agreement proposed by the applicant and a copy of the security instrument (if any) proposed by the applicant. In this regard, see paragraph (e) of this section.

(3) *Relevant taxpayers.* An application for withholding certificate pursuant to this section must set forth the name, identifying number (if any) and home address (in the case of an individual) or office address (in the case of an entity) of each relevant taxpayer with respect to which adjusted withholding is sought.

(c) *Adjustment of amount required to be withheld.* The Internal Revenue Service may issue a withhold certificate that excuses withholding or that permits an entity or fiduciary to withhold an adjusted amount reflecting the relevant taxpayers' maximum tax liability. A relevant taxpayer's maximum tax liability is the maximum amount which that taxpayer could be required to pay as tax by reason of the transaction upon which withholding is required. In the case of an individual taxpayer that amount will generally be the gain realized by the individual, multiplied by the maximum individual income tax rate applicable to long term capital gain. In the case of a corporate taxpayer, that amount will generally be the gain realized by the corporation, multiplied by the maximum corporate income tax rate applicable to long term capital gain. However, that amount must be adjusted to take into account the following:

(1) Any reduction of tax to which the relevant taxpayer is entitled under the provisions of a U.S. income tax treaty;

(2) The effect of any nonrecognition provision that is applicable to the transaction;

(3) Any losses previously realized and recognized by the relevant taxpayer during the taxable year by reason of the operation of section 897;

(4) Any amount realized upon the subject transfer by the relevant taxpayer that is required to be treated as ordinary income under any provision of the Code; and

(5) Any other factor that may increase or reduce the tax upon the transaction.

(d) *Relevant taxpayer's exemption from U.S. tax—*(1) *In general.* The Internal Revenue Service will issue a withholding certificate that excuses withholding by an entity or fiduciary if it is established that a relevant taxpayer's income from the transaction will be exempt from U.S. tax. For the available exemptions, see paragraph (d)(2) of this section. If a relevant taxpayer is entitled to a reduction of (rather than an exemption from) U.S. tax, then the entity or fiduciary may obtain a withholding certificate to that effect pursuant to the provisions of paragraph (c) of this section.

(2) *Available exemptions.* A relevant taxpayer's income from a transaction with respect to which withholding is required under section 1445(e) may be exempt from U.S. tax because either:

(i) The relevant taxpayer is an integral part or controlled entity of a foreign government and the subject income is exempt from U.S. tax pursuant to section 892 and the regulations thereunder; or

(ii) The relevant taxpayer is entitled to the benefits of an income tax treaty that provides for such an exemption (subject to the limitations imposed by section 1125(c) of Pub. L. 96-499, which, in general overrides such benefits as of January 1, 1985).

(e) *Agreement for the payment of tax—*(1) *In general.* The Internal Revenue Service will issue a withholding certificate that excuses withholding or that permits an entity or fiduciary to withhold a reduced amount, if the entity, fiduciary, or a relevant taxpayer enters

into an agreement for the payment of tax pursuant to the provisions of this paragraph (e). An agreement for the payment of tax is a contract between the Service and the entity, fiduciary, or relevant taxpayer that consists of two necessary elements. Those elements are—

(i) A contract between the Service and the other person, setting forth in detail the rights and obligations of each; and

(ii) A security instrument or other form of security acceptable to the Assistant Commissioner (International).

(2) *Contents of agreement*—(i) *In general*. An agreement for the payment of tax must cover an amount described in subdivision (ii) or (iii) of this paragraph (e)(2). The agreement may either provide adequate security for the payment of the chosen amount with respect to the relevant taxpayer in accordance with paragraph (e)(3) of this section or provide for the payment of that amount through a combination of security and withholding of tax by the entity or fiduciary.

(ii) *Tax that would otherwise be withheld*. An agreement for the payment of tax may cover the amount of tax that would otherwise be required to be withheld with respect to the relevant taxpayer pursuant to section 1445(e). In addition to the amount computed pursuant to section 1445(e), the applicant must agree to pay interest upon that amount, at the rate established under section 6621, with respect to the period between the date on which withholding tax under section 1445(e) would otherwise be due and the date on which the relevant taxpayer's payment of tax with respect to the disposition will be due. The amount of interest agreed upon must be paid by the applicant regardless of whether or not the Service is required to draw upon any security provided pursuant to the agreement. The interest may be paid either with the return or by the Service drawing upon the security.

(iii) *Maximum tax liability*. An agreement for the payment of tax may cover the relevant taxpayer's maximum tax liability, determined in accordance with paragraph (c) of this section. The agreement must also provide for the payment of an additional amount equal

to 25 percent of the amount determined under paragraph (c) of this section. This additional amount secures the interest and penalties that would accrue between the date of the relevant taxpayer's failure to file a return and pay tax with respect to the disposition, and the date of which the Service collects upon that liability pursuant to the agreement.

(iv) *Allocation of payment*. An agreement for the payment of tax pursuant to this section must set forth an allocation of the payment provided for by the agreement among the relevant taxpayers with respect to which the withholding certificate is sought. In the case of an agreement that covers an amount described in subdivision (ii) of this paragraph (e)(2), such allocation must be based upon the amount that would otherwise be required to be withheld with respect to each relevant taxpayer. In the case of an agreement that covers an amount described in subdivision (iii) of this paragraph (e)(2), such allocation must be based upon each relevant taxpayer's maximum tax liability.

(3) *Major types of security*. The major types of security that are acceptable to the Internal Revenue Service for purposes of this section are described in § 1.1445-3(e)(3).

(4) *Terms of security instrument*. Any security instrument that is furnished pursuant to this section must contain the terms described in § 1.1445-3(e)(4).

(f) *Amendments to application for withholding certificates*—(1) *In general*. An applicant for a withholding certificate may amend an otherwise complete application by submitting an amending statement to the Assistant Commissioner (International) at the address provided in § 1.1445-1(g)(10). The amending statement shall provide the information required by § 1.1445-6(f)(3) and must be signed and accompanied by a penalties of perjury statement in accordance with § 1.1445-6(b).

(2) *Extension of time for the Service to process requests for withholding certificates*—(i) *In general*. If an amending statement is submitted, the time in which the Internal Revenue Service must act upon the amended application shall be extended by 30 days.

(ii) *Substantial amendments.* If an amending statement is submitted and the Service finds that the statement substantially amends to the facts of the underlying application or substantially alters the terms of the withholding certificate as requested in the initial application, the time within which the Service must act upon the amended application shall be extended by 60 days. The applicant shall be so notified.

(iii) *Amending statement received after the requested withholding certificate has been signed by the Assistant Commissioner (International).* If an amending statement is received after the withholding certificate, drafted in response to the underlying application, has been signed by the Assistant Commissioner (International) or his delegate and prior to the day such certificate is mailed to the applicant, the time in which the Service must act upon the amended application shall be extended by 90 days.

(3) *Information required to be submitted.* No particular form is required for an amending statement but the statement must provide the following information:

(i) *Identification of applicant.* The amending statement must set forth the name, address, and identifying number (if any) of the person submitting the amending statement.

(ii) *Date of application.* The amending statement must set forth the date of the underlying application for a withholding certificate.

(iii) *Real property interest to be (or that has been) transferred.* The amending statement must set forth a brief description of the real property interest with respect to which the underlying application for a withholding certificate was submitted.

(iv) *Amending information.* The amending statement must fully set forth the basis for the amendment including any modification of the facts supporting the application for a withholding certificate and any change sought in the terms of the withholding certificate.

(g) *Early refund of overwithheld amounts.* If the Internal Revenue Service issues a withholding certificate pursuant to this section, and an amount greater than that specified in

the certificate was withheld by the entity or fiduciary, then pursuant to the rules of this paragraph (g) a relevant taxpayer may apply for an early refund of a proportionate share of the excess amount (without interest) prior to the date on which the relevant taxpayer's return is due (without extensions). An application for an early refund must be addressed to the Assistant Commissioner (International), at the address provided in § 1.1445-1(g)(10). No particular form is required for the application, but the following information must be set forth in separate paragraphs numbered to correspond with the numbers given below:

(1) Name, address, and identifying number (if any) of the relevant taxpayer seeking the refund;

(2) Amount required to be withheld pursuant to withholding certificate;

(3) Amount withheld by entity or fiduciary (attach a copy of Form 8288-A stamped by IRS pursuant to § 1.1445-5(b)(4) or provide substantial evidence of the amount withheld in the case of a failure to receive Form 8288-A, as provided in § 1.1445-5(b)(7)); and

(4) Amount to be refunded to the relevant taxpayer.

An application for an early refund cannot be processed unless the required copy of Form 8288-A or substantial evidence of the amount withheld in the case of a failure to receive Form 8288-A (as provided in § 1.1445-5(b)(7)) is attached to the application. If an application for a withholding certificate is submitted after the transfer takes place, then that application may be combined with an application for an early refund. The Service will act upon a claim for refund within the time limits set forth in § 1.1445-6(a)(1).

[T.D. 8113, 51 FR 46648, Dec. 24, 1986; 52 FR 3796, 3917, Feb. 6, 1987]

§ 1.1445-7 Treatment of foreign corporation that has made an election under section 897(i) to be treated as a domestic corporation.

(a) *In general.* Pursuant to section 897(i) a foreign corporation may elect to be treated as a domestic corporation for purposes of sections 897 and 6039C. A foreign corporation that has made such an election shall also be treated as a domestic corporation for purposes of